



2026:DHC:5746-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4785/2021**

UNION OF INDIA

.....Petitioner

Through: Mr. Rakesh Kumar, SPC with
Mr. Sunil, Adv.

versus

ISHWER SINGH & ANR.

.....Respondents

Through: Mr. Pankaj Kumar Singh, Mr.
Shubhendu Saxena, Ms. Niharika and Mr.
Aman Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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17.07.2026

C. HARI SHANKAR, J.

1. Disciplinary proceedings were instituted against Respondent 1 Ishwer Singh, with respect to the time when he was working as Deputy Central Intelligence Officer in the Intelligence Bureau of the Government of India, alleging that he had used abusive language in telephonic conversation with another employee and had also physically assaulted him. The Inquiry Officer¹, in his report dated 7 January 2015, opined that the charge against Respondent 1 was not proved.

2. Disagreeing with the finding of the IO, the Disciplinary



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Authority² issued a Disagreement Note on 6 June 2016, and called upon Respondent 1 to respond to the Disagreement Note. Respondent 1 replied on 18 July 2016. The advice of the Union Public Service Commission was requisitioned on 28 March 2017. The DA, thereafter, by order dated 1 June 2017, imposed the penalty, on Respondent 1, of reduction to a lower stage in the time scale of pay by three stages till the date of his superannuation on 29 February 2020.

3. Aggrieved thereby, Respondent 1 approached the Central Administrative Tribunal³ by way of OA 2601/2017.

4. By judgment dated 6 February 2020, the Tribunal has allowed the OA, holding that the Disagreement Note was not tentative in terms but expressed a final opinion that the charges against Respondent 1 stood proved. The Tribunal holds that this was not permissible. Accordingly, the Disagreement Note was set aside. Thereafter, the Tribunal holds, as Respondent 1 was retiring from service, and the charge against him did not deal with fraudulent activities or misappropriation of funds but was only a matter of altercation between employees, which was not supported by CCTV footage, Respondent 1 could not be subjected to further proceedings after retirement, having regard to the length of service and the position occupied by him in a sensitive and important organization. Accordingly, the Tribunal has deemed it appropriate to quash the disciplinary proceedings in their entirety and have also directed that the sealed cover, to which the recommendations of the Departmental

² "DA", hereinafter

³ "the Tribunal", hereinafter



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Promotion Committee which considered Respondent 1 for promotion had been relegated, be open and acted upon, with consequential relief.

5. Aggrieved thereby, the Union of India has approached this Court by means of the present writ petition.

6. We have heard Mr. Rakesh Kumar, learned SPC and Mr. Pankaj Kumar Singh, learned Counsel for the respondents, at length.

7. Mr. Rakesh Kumar submits that the Disagreement Note dated 6 June 2016, holistically read, could not be said to have conveyed a final decision regarding his guilt and that the Tribunal erred in merely relying on the concluding recital in the Disagreement Note. He relies, in support of his submissions, on the judgment of a Division Bench of this Court in *Union of India v. Dr. M.B. Pahari*⁴.

8. Mr. Rakesh Kumar submits, in the alternative and without prejudice, that, even if the decision to set aside the penalty imposed on Respondent 1 were to be upheld, the Tribunal ought to have relegated the proceedings to the stage when the inquiry report had been furnished to him and could not have set aside the proceedings wholesale. He once again relies, for this purpose, on *Dr. M.B. Pahari* as well as para 23 of the judgment of another Division Bench of this Court in *Rishipal Singh v. Union of India*⁵.

9. Mr. Pankaj Kumar Singh, learned Counsel for Respondent 1

⁴ 2011 SCC OnLine Del 4333

⁵ 2010 SCC OnLine Del 1338



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submits, *per contra*, vis-à-vis the aspect of relegation of the proceedings to the stage of furnishing of the inquiry report, that it would be a travesty of justice if this were to be done, as several years have passed in this litigation and the entire exercise initiated by the petitioner was *mala fide*. He has sought to rely, in this context, on the evidence of the prosecution witness in cross-examination.

10. Having heard learned Counsel for the parties and keeping in view the law that has been developed in that regard, we express our agreement with the Tribunal, with respect to its finding that the Disagreement Note was not tentative in nature but was expressive of a final opinion regarding the guilt of Respondent 1. After analyzing the evidence in great detail, the DA concludes the note with the following recital:

“In view of above and from the evidence adduced during the course of the inquiry the charges against Shri Ishwar Singh stand amply proved.”

11. To our mind, the Tribunal is correct in its view that, by observing as above, the DA clearly conveyed his opinion that the charges against Respondent 1 stood proved. Any exercise of calling for a response thereof and taking a view thereon would, therefore, be no more than an empty formality.

12. While it is true that a Court need not, in every case, be hypersensitive to the exact wording used in the Disagreement Note, a holistic reading of the Disagreement Note read with aforementioned conclusion can leave no manner of doubt, at least in the mind of Respondent 1 as the charged officer, that the exercise of filing a reply



before the DA and submitting himself to the discretion of the DA would be a futility. We may note that, even in **Dr. M.B. Pahari**, on which Mr. Rakesh Kumar placed reliance, this Court found the Disagreement Note to be conclusive in terms and expressive of a final opinion regarding the guilt of the charged employee in that case.

13. Besides, we are exercising *certiorari* jurisdiction over the decision of the Tribunal. The limits of this jurisdiction stand clearly delineated in the following passages from **Syed Yakoob v K.S. Radhakrishnan**⁶:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In*

⁶ AIR 1964 SC 477



dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

(Emphasis supplied)"



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14. We, therefore, are not sitting in appeal over the decision of the Tribunal. The question of whether the disagreement note, seen as a whole, is expressive of a final opinion regarding the guilt of the charged officer, is essentially one of the discretions of the Court. Once the Tribunal has taken a view, on reading the disagreement note, that it partook of the character of finality, unless the said view is one which could not reasonably be arrived at, we would be loath to interfere therewith.

15. We, therefore, cannot agree with Mr. Rakesh Kumar in his submission that the disagreement note was not final in the view it took.

16. Apropos the issue of whether the Tribunal ought to have set aside the disciplinary proceedings wholesale, however, Mr. Rakesh Kumar is undoubtedly on a better wicket.

17. We cannot agree with the finding of the Tribunal that “having regard to the length of service and the position occupied by the applicant in a sensitive and important organisation, he (could not) be subjected to further proceedings even after his retirement”. The Supreme Court has held in ***Managing Director, ECIL v. B. Karunakar***⁷ that, if a court finds that the disciplinary proceedings are vitiated owing to a breach of procedure, the court cannot set aside the punishment which is finally awarded to the employee, but has to remand the proceedings to the stage at which the procedural impropriety took place and allow the proceedings to continue from

⁷ (1993) 4 SCC 727



that stage. If it is a case of removal or termination from service, the Supreme Court has further clarified that an employee would be deemed to be under suspension for the period when the inquiry continues.

18. We are of the opinion that the observation of the Tribunal that the position occupied by Respondent 1 and the length for which he had served the petitioner foreclosed the possibility of further proceedings being continued against him is unsupported by any known law. On that day, he had not yet reached the age of superannuation. There was, therefore, was no embargo on Respondent 1 being proceeded from the stage at which the inquiry report had been furnished to him.

19. Even if, thereafter, he retired from service, as the DA of Respondent 1 was the Hon'ble President of India, an order could be passed, however, in terms of Rule 9⁸ of the Central Civil Services

⁸ 9. **Right of President to withhold or withdraw pension –**

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.



(Pension) Rules, 1972 read with Rules 8⁹ and 87(2)(e)¹⁰ of the Central Civil Services (Pension) Rules 2021.

20. We are also unable to subscribe to the view of Mr. Singh that the petitioner acted *mala fide*. No finding of *mala fide* has been returned by the Tribunal. We, therefore, are not willing, in these proceedings, to return any such finding. Besides, the submission is predicated on testimony of witnesses during cross-examination in inquiry proceedings and are, therefore, subject to the view which the DA would take thereon. We cannot foreclose the DA from taking a view in that regard by expressing any opinion.

21. In that view of the matter, we agree with Mr. Rakesh Kumar in his submission that the Tribunal ought not to have set aside the proceedings wholesale and ought to have remanded the matter to the stage when the inquiry report had been furnished to the Respondent 1.

22. We, therefore, uphold the decision of the Tribunal to the extent it holds that the Disagreement Note dated 6 June 2016 expressed a

⁹ 8. **Power to withhold or withdraw pension. –**

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of minimum pension under rule 44.

¹⁰ 87. **Repeal and saving. –**

(2) Notwithstanding such cesser of operation, -

(e) subject to the provisions of clauses (c) and (d) anything done or any action taken under the old rule shall be deemed to have been done or taken under the corresponding provisions of these rules.



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conclusive opinion and was not tentative in nature as required by law. However, we set aside the decision to completely quash the disciplinary proceedings against Respondent 1. The punishment awarded to Respondent 1 would naturally stand quashed. However, the proceedings would stand remanded to the stage when the inquiry report was furnished to Respondent 1. The DA would, therefore, have to re-examine the matter and take a decision as to whether to agree with the inquiry report or disagree with it. In the event of disagreement, we are sanguine that the DA would follow the procedure known to law in that regard.

23. We express no opinion on the merits of the charges against Respondent 1 or the merits of the finding of the IO. In order to expedite matters, we direct the DA to take a view on the inquiry report of the IO within a period of four weeks from today and communicate the decision as to whether to accept or not accept the decision of the IO in his inquiry report dated 7 January 2015 within four weeks from today and communicate the decision to Respondent 1. In the event that the DA intends to disagree with the findings of the IO, a proper disagreement note would be issued to Respondent 1 and proceedings thereafter would also be communicated within four weeks thereof.

24. In the meanwhile, we restrain the petitioner from taking any adverse action against Respondent 1 because of the order that we have passed today. Any further action against Respondent 1 would abide by the outcome of the *de novo* decision of the DA and any further challenge that Respondent 1, if aggrieved, may prefer thereagainst.



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25. Needless to say, should Respondent 1 continue to remain aggrieved by the decision taken by the DA, his rights in law would remain reserved.

26. The writ petition is, therefore, partly allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J

VINOD KUMAR, J

JULY 17, 2026

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